IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 541 OF 2006

M/s. MRM Associates .... Petitioner

versus

State of Maharashtra & ors. ... Respondents.

Shri V.R.Manohar Sr. counsel with S.G.Surana and Mrs.
C.R.Salgaonkar and Mrs. A.Kaushik for the petitioner.
Shri S.R.Nargolkar AGP for Respondent no.1.
Shri P.P.Chavan with Swapnil Desai i/b Little & Co.
for Respondent no.2.
Shri R.S.Apte with A.A.Garse for Respondent no.3.

CORAM; V.G. PALSHIKAR &
V.R. KINGAONKAR, JJ.

DATED; 19TH APRIL, 2006.

P.C:

1. By this petition, the petitioner has made four prayers. By first prayer it seeks declaration of deemed permission under section 45(5) of the MRTP Act. Then a prayer is made for a direction to respondent no.3 Municipal Corporation to sanction the proposal submitted by the petitioner for construction on 29th August 2005. Others are incidental or interlocatory prayers.

2. In response to the Rule issued, replies have been filed and the learned counsel appearing for both the sides are heard.

3. The contention of the petitioner basically is that section 45(5) of the MRTP Act provides for deemed sanction to construct and therefore on the facts alleged in the petition, the petitioner is entitled to such declaration. A declaration to this effect, according to the learned counsel for the petitioner is necessary because factual obstruction eminent in nature is to be avoided before construction is taken up. Apart from that a direction is also necessary for sanctioning of the plan submitted by the petitioner so that no difficulty arises in future.

4. The State also have filed a reply in this case and has affirmed the documents annexed by the petitioner to the petition at page 84 where the Government has unequivocally stated that the sanction to construct under section 45 of the Act can be granted provided the FSI is restricted to one FSI. According to the learned counsel for the petitioner, the petitioner also does not desire anything more than what is permissible in law.

5. Certain dates are required to be noted before we proceed to consider the application of section 45 (5). On 24th March 2005 the petitioner, for a valuable consideration leased a plot of land at MIDC from the

respondent no.2. On 29-8-2005 submitted a proposal to the Municipal Corporation respondent no.3 for approval of his building plan which accompanied the proposal. On 6th September the respondent no.3 called upon the petitioners to provide certain documents of title and on 12-9-2005 the petitioner paid the property tax to the respondent no.3 Corporation.

6. On 11-11-2005 the respondent no.3 Corporation sought clarification from the State Government which came on 2-12-2005 wherein the Government specifically stated that sanction for one FSI can be granted to the petitioner. In such circumstances, the claim of the petitioner is that he is entitled to such declaration of deemed permission and a direction that the plan be accordingly sanctioned. The scope and extent of section 45 was considered by the Supreme Court of India **in M/s. Live Oak Resort P.Ltd and another Vs. Panchgani Hill Station Municipal Council and another reported in AIR 2001 S.C. page 3478,** wherein the question of deemed permission was considered. The Supreme Court of India in para 29 of this judgment has dealt with this aspect of that deemed permission as statutorily granted. Para 29 reads thus:

29. As regards the issue of deemed sanction, the High Courts answered it in the negative

recording therein that the appellants were refused of any sanction though beyond the period as such deemed sanction would not arise. Unfortunately, we cannot lend our concurrence thereto. Panchgani Municipal Council being a 'C" class Municipal Council of Maharashtra in its standarised buildings Bye-laws in particular bye-law 9.2 records that while the authority may sanction or refuse a proposal, there stands an obligation on the part of the authority to communicate the decision and where no orders are communicated within 60 days from the date of submission of the plan either by way of a grant or refusal thereto, the authority shall be deemed to have permitted the proposed construction. In view of our observations noticed hereinbefore, we are not inclined to go into this issue in any detail suffice however, to record that the submissions pertaining to deemed sanction has substance and cannot be brushed aside in a summary fashion. Eventual rejection does not have any manner of correlation with deemed sanction- iut is only that expiry of the 60 days that the sanction is deemed to be given subsequent rejection cannot thus affect any

work of construction being declared as unauthorised. The deeming provision saves such a situation. As noticed above, we are not inclined to detain ourselves any further on this score.

7. It will be seen from the above observation of the Supreme Court of India, that the grant of deemed persmission is necessary to avoid any pleasant situation for eventual rejection of the plan after the expiry of 60 days as contemplated by section 45.

8. Section 45(5) has a proviso which clearly binds a person or body claiming grant of deemed sanction. It is specifically provided by the proviso that developement proposals for which permission was deemed to have been granted must be in conformity with the requirements of all the relevant Development Control Regulations framed under this Act or bye-laws or regulations framed in this behalf under any law for the time being in force and the same in no way violates either the provisions of any draft or final plan or the same in no way violates either the provisions of any draft or final plan or proposals published by means of notice, submitted for sanction under this Act. It is then stipulated by second proviso that any development carried out in pursuance of such deemed permission

which is in contravention of the provisions of the first proviso, shall be deemed to be an unauthorised development for the purposes of sections 52 to 57. That being the legal position we see no reason why the declaration as prayed for be not granted.

9. In the result the petition succeeds and is allowed. It is declared that the petitioner is entitled to deemed permission as contemplated by sectrion 45 (5) of the MRTP Act, naturally when all the conditions mentioned in both the provisos which infact is a right given to the Corporation to prevend any unauthorised construction under the garb of deemed permission. The respondent no.3 Corporation is directed to issue the sanction as it is deemed to have been granted as early as possible preferably in four weeks from the date of receipt of this order.

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